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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,453	01/09/2004	Bernard Paul Joseph Thiers	THIE3009/JEK	8707
23364 7590 12/24/2008 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER				
CHAPMAN, JEANETTE E				
ART UNIT		PAPER NUMBER		
3633				
MAIL DATE		DELIVERY MODE		
12/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/753,453

**Applicant(s)**

THIERS ET AL.

**Examiner**

Jeanette E. Chapman

**Art Unit**

3633

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CS-100)  
Paper No(s)/Mail Date 1/9/04, 9/30/05, 9/26/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz et al (2559261) in view of Meckstroth (3641730), Sugar (3350827), Haffner et al (6863768) and Hendrich (4479333).

Schwartz discloses a set of floor panels configured for forming one and a same floor covering; the floor panels may be packaged together since Schwartz discloses providing the panels in a kit. The set of floor panels comprising at least two types of individual floor panels, 50/ 51 and 52, a first type of floor panels defining a substantially common first length 8x16 that is different from a second common length 16x16 defined by a second type of floor panels 52, the types of the floor panels being defined by their corresponding lengths, each floor panel defining a generally rectangular, strip shaped hard floor panel having a layered structure and mechanical coupling parts defined along each of four edges of the panel;

Meckstroth discloses a set of floor panels comprising at least two types of floor panels comprising:

- A first type of floor panels of a first common length that is different from a second common length defined by a second type of floor panels; see column 2, lines 50-56;

- The floor panels are defined by their lengths
- Each panel is rectangular; column 2, lines 15-20
- Each panel includes a floor panel having a layered structure 14/16/18
- Mechanical coupling 20/30 of parts defined along each of the four edges, as many connecting side edges included in the rectangular panels, of the panels.
- The coupling parts located on opposed side edges 25 of each panels 10 are arranged for locking in both vertical and horizontal directions; see figure 1
- The outer skin 14 is constructed of plywood not of decorative paper layer soaked in resin;
- The panels consist of 2,4, 6, etc..... feet sets; Thus totaling, 2 through the nth sets;
- for example the six feet set panels are all of equal length and width but the two, four and 6 feet sets each have different lengths and widths
- There are 3 different lengths thus three types of floor panels
- The first length is 6 feet, the second length is 4 feet and the third length is two feet
- Given the above, the second and the third length have a combined length generally equal to the first, the first length defines the longest length
- The combination or ratio of lengths is limitless and thus the quantity of panels to the first type may outnumber the floor panels of the other types
- The specific dimensions of the width in comparison to the length has been considered a matter of design choice; one of ordinary skill in the art would have

appreciated making the pales of any dimensions commensurate with the use, purpose and function of the panels.

- The first length set of 6 feet has a first width, the second set of 4 feet has a second width, the third set has a third width
- All four coupling parts of each of the floor panels are arranged for locking in both the horizontal and vertical directions with other floor panels; see column 2, lines 40-45 and figures 1 and 3

The secondary reference to Sugar discloses building panels having at least five different patterns or decors. The panels are packaged together at the factory; "each package preferably contains a plurality of different patterns, such as, for example, five different patterns, which are applied at the installation in a random manner ...."; See column 2, lines 16-22. The type of package is seen as having no criticality on the recited structure of the floor panels. Applicant's claims are directed to the set of floor panels not the method of packaging which is a separate class of invention not elected in this application. Sugar discloses panels that are used for the interior and exterior of a building; again the set of different panels are packaged at the factory and shipped to the construction site for installation. This function is the main purpose for packaging the panels together. Packaging the same in a single box or in several boxes or in a different type of container has no bearing on patentability of the floor panels. Again the class of invention for the above referenced application is the set of flooring panels not the method of packaging. Nevertheless it would have been obvious to employ at least two

different flooring decors and to package them together for the convenience of the installer as taught by Sugar.

Haffner et al discloses a panel with a layered structure including decorative paper soaked in resin. See columns 5 and 6. The printed pattern decorative layer portrays a wood or parquet pattern or a single continuous wood pattern over at least one entire surface of the respective floor panel. See column 12. One of ordinary skill in the art would have used the materials of Haffner to provide an attractive appearance while providing resistance to chemical agents, heat, light scuff and abrasion.

Hendrich (4479333) discloses building structures packaged for transportation to a building site. It is highly likely that the packaging of the panels would at least fit the largest length while not providing extra room within the package for shifting of the panels therein. One of ordinary skill in the art would have appreciated packaging the materials in any convenient, efficient and low cost manner including packaging the panels so that that one of the panels is arranged along the same level in the package thereby combining to span the entire length of the package

In view of the above, it would have been obvious to make the set of floor panels with mechanical locking elements as shown by Meckstroth with decorative paper soaked in resin as shown by Haffner, packaged panels as shown by Sugar packaged for transportation to a construction site as shown by Hendrich in order to provide a convenient means to use panels from different appearances and styles for aesthetic appeal.

Alternatively

Claims 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz in view of Meckstroth (3641730) in view of Haffner et al (6863768) and Hendrich (4479333) and further in view of Allison (5403055). Allison shows building panels arranged at a same vertical level in a package thereby combining to span the entire length of the package. See figures 4,6 and 7. Again , the claims are directed to the set of flooring panels not the packaging methodology. Nevertheless, it would have been obvious to employ the packaging method of Allison for convenience and efficiency as shown by Allison. See obviousness rational above for packaging the panels in a single box.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 24-36 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached at 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JEANETTE CHAPMAN/  
PRIMARY PATENT EXAMINER  
ART UNIT 3633

jcc